

ABOUT THE WEEKLY SUMMARY

The Weekly Summary of NLRB cases, as the name implies, is a publication that summarizes each week all published NLRB decisions in unfair labor practice and representation election cases, except for summary judgment cases. It also lists all decisions of NLRB administrative law judges and direction of elections by NLRB regional directors. Links are established from the weekly summary index to the summaries and from the summaries to the full text of the decisions.



[Index of Back Issues Online](#)

March 24, 2000

W-2731

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

[Douglas Foods Corporation](#), Garden City, MI
[EMCOR Group, Inc.](#), Islip, NY
[IBP, Inc.](#), Logansport, IN
[Reading Rock, Inc.](#), Cincinnati, OH

OTHER CONTENTS

[List of Decisions of Administrative Law Judges](#)

Press Releases:

[\(R-2382\) Richard Scully is Appointed NLRB's Deputy Chief Administrative Law Judge](#)
[\(R-2384\) Angela F. Crawford is Named NLRB's Chief, Procurement and Facilities Branch](#)

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Douglas Foods Corp. (7-CA-38788(1)(2), et al., 7-RC-20872; 330 NLRB No. 124) Garden City, MI March 13, 2000. The Board agreed with the administrative law judge that the Respondent's lease drivers are employees rather than independent contractors and that the Respondent violated Section 8(a)(3) and (1) of the Act in several respects including threatening to close its hot truck routes and impose pay cuts if Food and Commercial Workers Local 876 were selected, creating the impression that employee union activities were under surveillance, threatening employees with more intense truck inspections, threatening employees with adverse consequences if they honored a Board subpoena, granting at least one employee a pay

raise in order to discourage her support for the Union, laying off Debra Beck and issuing her a disciplinary notice, and the sham sale of the entire truck operation. [\[HTML\]](#) [\[PDF\]](#)

Members Fox and Liebman, with Member Hurtgen dissenting on the four points, agreed with the judge that the Respondent's President, Douglas George, threatened the lease route operators with a change in status if they supported the Union, interrogated Lisa Bowman, and discharged Michelle Benkert in violation of the Act; and that a Gissel bargaining order is an appropriate and necessary remedy in this case.

In the absence of exceptions, the Board adopted the judge's recommendation that the Union's objections to the election in Case 77-RC-20872 be sustained and that the election held on August 23, 1996 be set aside.

(Members Fox, Liebman, and Hurtgen participated.)

Charges filed by Food and Commercial Workers Local 876; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Detroit, May, July, Aug., and Sept. 1997. Adm. Law Judge Arthur J. Amchan issued his decision March 6, 1998.

* * *

Reading Rock, Inc. (9-CA-34502; 330 NLRB No. 132) Cincinnati, OH March 14, 2000. Affirming the administrative law judge's recommended Order, the Board dismissed a complaint alleging that the Respondent violated Section 8(a)(5) and (1) of the Act by insisting to impasse and as a condition of reaching a collective-bargaining agreement, on a nonmandatory subject--the exclusion of owner-operators and Greschel Trucking drivers from the bargaining unit (lease drivers), that a strike beginning on September 23, 1996 was an unfair labor practice strike, and that the Respondent violated Section 8(a)(3) and (1) by failing to recall all strikers immediately. Member Fox concurred. No exceptions were filed to the judge's finding that the Respondent and Greschel Trucking are joint employers. [\[HTML\]](#) [\[PDF\]](#)

Chairman Truesdale and Member Hurtgen did not pass on the issue of whether the difference between the parties was substantive or semantic, noting that regardless of the nature of the difference, the Respondent did not insist to impasse on a nonmandatory subject. Member Fox found the judge's characterization of the differences between the parties as nonsubstantive is erroneous, noting that the Respondent's proposal involved a significant reduction in the lease drivers' statutory rights and a change in the scope of the bargaining unit certified by the Board. She pointed out that the Board has found a repeated proposal to change the scope of the unit constitutes, in appropriate circumstances, evidence of a pattern of bad-faith. The complaint in this case however does not allege overall bad-faith bargaining, nor was such a theory litigated by the General Counsel, Member Fox noted, in concluding that the Respondent, although it made the nonrecognition proposal repeatedly, never insisted on it to impasse or as the price for an overall agreement.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charge filed by Teamsters Local 100; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Cincinnati, June 26-27, and Aug. 19-20, 1997. Adm. Law Judge Arthur J. Amchan issued his decision Oct. 27, 1997.

* * *

IBP, Inc. (25-CA-25304; 330 NLRB No. 133) Logansport, IN March 14, 2000. The Board affirmed the administrative law judge's decision that the Respondent did not violate Section 8(a)(1) of the Act by discharging certain employees for engaging in protected concerted activities when they complained about the amount of their wage increase and for engaging in a work stoppage over the issue or by interrogating its employees about their concerted activities. The judge found, and the Board agreed, that the employees voluntarily quit their jobs and that the individual employee meetings were investigatory in nature in order to uncover the facts surrounding the reasons why the employees refused to return to work and that no coercive interrogation occurred at them. [\[HTML\]](#) [\[PDF\]](#)

The General Counsel argued that, contrary to the judge, Elizabeth Mendoza, an IBP orientation trainer and interpreter, did not testify that, when the employees returned to the plant seeking their jobs back, they told her they had earlier "quit" at that time.

The Board found that the overwhelming weight of the credited evidence, however, indicated that the employees used the word "quit" at numerous other relevant times, and it affirmed the judge's findings in this regard and the conclusions that flow from the findings.

No exceptions were filed to the judge's finding that the Respondent violated Section 8(a)(1) by selectively and disparately applying its rule that permits only IBP-issued stickers on hard hats.

(Chairman Truesdale and Members Hurtgen and Brame participated.)

Charge filed by Food and Commercial Workers Local 700; complaint alleged violation of Section 8(a)(1). Hearing at Logansport, Oct. 17-18 and Nov. 19, 1997. Adm. Law Judge Bruce D. Rosenstein issued his decision Feb. 5, 1998.

* * *

EMCOR Group, Inc., formerly known as JWP, Inc., and General Energy Development, Inc., and Inte-Fac Corp. (29-CA-18247; 330 NLRB No. 130) Islip, NY March 14, 2000. The Board affirmed the administrative law judge's decision, as modified, and held that the Respondents General Energy Development, Inc. (GED) and Inte-Fac Corp. constitute a single employer; and that the Respondents violated Section 8(a)(5) and (1) of the Act by refusing to bargain with Operating Engineers Local 30, as the exclusive representative of the nonsupervisoy chief engineers, engineers, operator/mechanics, and apprentices employees at the Islip landfill and electrical generating facility, and failing to bargain with the Union with respect to their decision to lay off employees and the effects of the decision. [\[HTML\]](#) [\[PDF\]](#)

In adopting the judge's finding of an 8(a)(5) and (1) violation for refusal to bargain, the Board noted that, although the judge did not explicitly find a general refusal to bargain in addition to the specific finding of failure to notify and afford the Union an opportunity to bargain over the layoffs, the record and his decision support such a finding of a general refusal to bargain as alleged. It modified the notice and Order to reflect its finding of a violation. The Board noted, in adopting the judge's finding of an 8(a)(5) violation concerning the Respondents' failure to bargain over the layoffs, that the Respondents have not argued that *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981), applies and have not excepted to the judge's finding that the parties' contractual management-rights clause did not waive the Union's right to bargain over economic layoffs.

Member Brame, unlike his colleagues, would grant the General Counsel's exceptions to the judge's failure to determine whether the Respondent violated Section 8(a)(3). He would sever and remand the issue because the individual employee rights protected by Sec. 8(a)(3) are different from the rights protected by Section 8(a)(5) and a finding of an 8(a)(3) violation would require that the notice contain additional language.

(Members Liebman, Hurtgen, and Brame participated.)

Charge filed by Operating Engineers Local 30; complaint alleged violation of Section 8(a)(1) and (5). Hearing held April and May 1997. Adm. Law Judge Raymond P. Green issued his decision Aug. 11, 1997.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

American Opera Musical Theatre Company (Musicians Local 802) New York, NY March 1, 2000. 2-CA-32154; JD(NY)-21-00, Judge Joel P. Biblowitz.

American Showa, Inc. (Teamsters Local 413) Delaware, OH March 17, 2000. 8-CA-31106; JD-37-00, Judge Bruce D. Rosenstein.

Armored Transport, Inc. (Currency and Security Handlers and United Plant Guard Workers Local 100) Bakerfield, Santa Maria, Fresno, Merced and Temecula CA March 7, 2000. 31-CA-23504, et al.; JD(SF)-13-00, Judge Clifford H. Anderson.

Bath Iron Works Corporation (Machinists Local Lodge S-6 and S-7, District Lodge 4 and Bath Draftsmen's Association) Bath, ME March 15, 2000. 1-CA-36658, et al.; JD-36-00, Judge Arthur J. Amchan.

Carpenters Local 623 (Atlantic Exposition Services, Inc.) Atlantic City, NJ March 16, 2000. 4-CE-116; JD-7-00, Judge Benjamin Schlesinger.

Carpenters Metropolitan Regional Council of Philadelphia and Vicinity (Society Hill Towers Owners' Association and Nytech) Philadelphia, PA March 17, 2000. 4-CB-8315, et al.; JD-32-00, Judge David L. Evans.

Mar-Jam Supply Company, Inc. (Teamsters Local 331) Pleasant, NJ March 17, 2000. 4-CA-27831 and 27867; JD-38-00, Judge Earl E. Shamwell Jr.

RJV Transport, Inc. (Service Employees Local 355) Freeport, NY March 17, 2000. 29-CA-22926 and 23085; JD(NY)-25-00, Judge Eleanor MacDonald.

Safway Steel Products, Inc. (Carpenters Local 2819) Brooklyn, NY March 14, 2000. 29-CA-22769; JD(NY)-26-00, Judge Steven Davis.

Saia Motor Freight Line, Inc. (Teamsters Local 745) Grand Prairie, TX March 17, 2000. 16-CA-19981, et al.; JD(ATL)-17-00, Judge Keltner W. Locke.

Stu Segall Productions (Teamsters Local 542) San Diego, CA February 29, 2000. 21-CA-33144 and 33172; JD(SF)-10-00, Judge Mary Miller Cracraft.